

HMK/jb GA 7921

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK,

Plaintiff,

-against-

ADVANCE OCEAN INC., NIPPON YUSEN
KAISHA, NYK LINE (NORTH AMERICA)
INC., BURLINGTON NORTHERN SANTA FE
CORPORATION, BNSF RAILWAY COMPANY,
THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY,

Defendants.
-----X

ECF CASE

07 CIV 6421 (PAC)(THK)

DECLARATION IN
OPPOSITION TO
DEFENDANT ADVANCE
OCEAN'S MOTION TO
DISMISS

Steven P. Calkins, hereby declares under the penalty of perjury that the following is true and correct as prescribed in 28 U.S.C. §1746:

1. I am an attorney admitted to practice law before this Court and am a member of the law firm of Kingsley, Kingsley & Calkins, attorneys for plaintiff, Great American Insurance Company of New York, and make this declaration in opposition to the motion of defendant Advance Ocean, Inc. to dismiss the amended complaint pursuant to Rule 12(b), F.R. Civ. P.

2. Attached hereto as Exhibit 1 is a copy of the website pages from Advance Ocean's website at <http://advanceocean.com>, showing "Our Services," and "Contact Us." The New York office of Advance Ocean, Inc. is listed, as is a California address.

3. Attached hereto as Exhibit 2 is the printout from the NYS

Department of State, Division of Corporations, showing two Advance Ocean entities, the first named Advance Ocean (NY), Inc. with a filing date of April 16, 1999, and an address in Jamaica, NY; and the second named Advance Ocean, Inc. with a filing date of July 18, 2007, also with an address in Jamaica, NY.

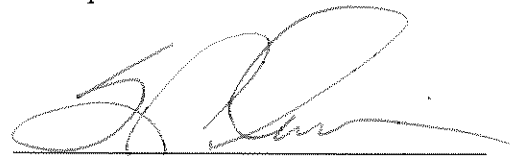
4. Attached hereto as Exhibit 3 is a printout from the Federal Maritime Commission's website for "ocean transportation intermediaries," listing Advance Ocean Inc. under authorized and licensed non-vessel-operating common carriers (NVOCCs), but not listed under the freight forwarder section.

5. Attached hereto as Exhibit 4 is a printout from the Federal Maritime Commission's website for news releases, which lists a compromise agreement reached with Advance Ocean Inc. for \$25,000, and identifying Advance Ocean, Inc. as, "an ocean transportation intermediary (NVOCC) located in Hacienda Heights, CA."

6. Attached hereto as Exhibit 5 is an email communication from Advance Ocean to "Bob Mohn" of Berardino & Associates, plaintiff's insured's freight forwarder for this shipment, providing the through rate quote for the subject cargo moving from Chicago to Latkrabang (Thailand) via Los Angeles.

WHEREFORE, defendant Advance Ocean Inc.'s motion to dismiss must be denied, and discovery allowed to proceed on plaintiff's claims herein.

Dated: February 15, 2008



Steven P. Calkins